IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CONTEMPT PETITION NO.4 OF 2006

IN

NOTICE OF MOTION NO.697 OF 2002

IN

SUIT NO.56 OF 2001

IN

TESTAMENTARY PETITION NO.689 OF 2001

Mr Prashand Apankar ...Petitioner

v/s

Mrs Phyllis Fernandes and ors. ...Respondents

Mr A.Y. Bookwala with Mr B.B. Saraf i/b M/s Ranjit and Co. for Petitioner.

Ms Rajani Iyer i/b M/s Vigil Juris for Respondent No.3.

CORAM : D.K. DESHMUKH J.

DATE : 28TH FEBRUARY 2007.

P.C. :-

1. By this petition, the petitioner alleges that the respondent No.3 - Mr Gerald Anthony Fernandez has disobeyed the order dated 23rd June 2005 passed by this Court in notice of motion No.697 of 2002. By that order, the respondent No.3 was directed to deposit with the Prothonotary and Sr. Master of this Court an amount of Rs.33,00,000/- alongwith the amount of accrued interest which he has received at the time of encashment of the bond, within a period of eight weeks from the date of the order. The order was challenged in appeal No.665 of 2005. The appeal was disposed off by order dated 5th September 2005. The Appeal Court dismissed the appeal and confirmed the order. The respondent No.3 did not comply with the order passed by the learned Single Judge dated 23rd June 2005. The respondent No.3 did not comply with that order even after the order was confirmed in appeal. Therefore, this contempt petition has been filed.

2. In this contempt petition, the only reason that is given for not complying with the Court's order is that the respondent No.3 was suffering from some ailment and that he had to spend that amount for his treatment. That the respondent No.3 was suffering from

some ailment and he was required to spend the amount for his treatment cannot be a ground for not complying with the order of the Court. There is no dispute that the order passed by this Court has not been complied with and has not been obeyed. What is more significant is that out of the amount that he had received by encashing the bond at one time, according to his own affidavit, he had with him Rs.14,00,000/- and still he did not deposit even that amount in Court. Therefore, to my mind, it is clear that the respondent No.3 is guilty of having committed civil contempt of the Court. The respondent No.3 has tendered an apology. Considering the conduct of the respondent No.3, in my opinion, the apology cannot be said to be a genuine apology. Therefore, punishment has to be imposed on the respondent No.3 for having committed civil contempt of the Court. So far as the aspect of punishment is concerned, on behalf of the respondent No.3, a statement has been made by the learned counsel appearing for respondent No.3 that she is having in her hand bank draft of Rs.33,00,000/- drawn in favour of the Prothonotary and Sr. Master of this Court and she further states that she is willing to deposit that bank draft with the Prothonotary and Sr. Master of this Court. The respondent No.3 is therefore directed to deposit that amount of Rs.33,00,000/- on or before 5th March 2007 with the Prothonotary and Sr. Master of this Court. According to the affidavit of the

respondent No.3 himself dated 18th August 2005 filed before the appeal Court, he received an amount of Rs.38,59,951/- at the time of encashment of the bond. After depositing Rs.33,00,000/-, an amount of Rs.5,59,951/- still remains in balance. The learned counsel appearing for respondent No.3 states that the said balance amount will also be deposited by the respondent No.3 in this Court. She states that the respondent No.3 will deposit Rs.50,000/- per month commencing from the month of April 2007, on or before 15th day of each calendar month and she will go on depositing Rs.50,000/- per month till she completes depositing Rs.5,59,951/-. The statement is accepted. In view of the willingness of the respondent No.3 to deposit the amount that was received by him at the time of encashment of bond and also considering that the respondent No.3 is suffering from ailment, in my opinion, interest of justice will be subserved by imposing fine on the respondent No.3 and by directing him to pay cost of this petition to the petitioner. Therefore, the respondent No.3 is directed to pay fine of Rs.1,000/- for having committed civil contempt of this Court. He is also directed to pay cost of this petition to the petitioner. The cost is quantified at Rs.5,000/. Both fine and cost shall be paid by the respondent No.3 within a period of four weeks from today.

3. The amount of Rs.33,00,000/- which is to be deposited on or before 5th March 2007 and the amount which is being deposited by instalments shall be invested by the prothonotary and Sr. Master of this Court in a nationalised bank in fixed deposit for appropriate period, during the pendency of the suit.

Petition is disposed off.

. Parties to act on the copy of this order duly authenticated by the Associate / Private Secretary as true copy.

. Certified copy expedited.